

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CEMENT MASONS PENSION FUND, LOCAL 502; CEMENT MASONS INSTITUTE OF CHICAGO, ILLINOIS; CEMENT MASONS SAVINGS FUND, LOCAL 502; and CEMENT MASONS APPRENTICE EDUCATION AND TRAINING FUND, LOCAL 502,

Plaintiffs,

v.

LANAS CONSTRUCTION, INC.,
an Illinois corporation,
Defendant.

FILED
March 12, 2008 TG
08cv1473
JUDGE SHADUR
MAGISTRATE JUDGE KEYS

No.

Judge

Magistrate Judge

COMPLAINT

Plaintiffs, by their attorneys, DONALD D. SCHWARTZ and ARNOLD AND KADJAN, complain against Defendant, LANAS CONSTRUCTION, INC., as follows:

COUNT I

1. (a) Jurisdiction of this cause is based on Section 301 of the National Labor Relations Act, 29 U.S. C. Section 185(a) as amended.

(b) Jurisdiction of this cause is based upon Section 502 of the Employee Retirement Security Act of 1974, 29 U.S.C. Section 1132, 1145 ("ERISA"), as amended.

2. Venue is founded pursuant to 29 U.S.C. Section 1132(e)(2) in this District where the Funds, as described in Paragraph 3, are administered.

3. (a) The Plaintiffs in this count are the CEMENT MASONS PENSION FUND, .LOCAL 502; CEMENT MASONS INSTITUTE OF CHICAGO, ILLINOIS; CEMENT MASOSN SAVINGS FUND, LOCAL 502; AND CEMENT MASONS APPRENTICE EDUCATION AND TRAINING FUND, LOCAL 502, ("the Funds"), and have standing to sue

pursuant to 29 U.S.C. Section 1132(d)(1).

(b) The Funds have been established pursuant to collective bargaining agreements previously entered into between the Cement Masons Union and its affiliated locals (the "Union") and certain employer associations whose employees are covered by the collective bargaining agreement with the Union.

(c) The Funds are maintained and administered in accordance with and pursuant to the provisions of the National Labor Relations Act, as amended, and other applicable state and federal laws and also pursuant to the terms and provisions of the agreements and Declarations of Trust which establish the Funds.

4. Defendant, LANAS CONSTRUCTION, INC., ("**LANAS**"), is an Illinois corporation doing business within this Court's jurisdiction. **LANAS** is an employer engaged in an industry affecting commerce.

5. Since **July 19, 2000**, **LANAS** has agreed to be bound by successive collective bargaining agreements with the Union pursuant to which it is required to make periodic contributions to the Cement Masons Pension Funds on behalf of its employees by virtue of submitting signed monthly fringe benefit report forms to Plaintiffs (Exhibit "A").

6. **LANAS** is required to make contributions to the Funds on behalf of its Cement Mason employees and, when given reasonable notice by Plaintiffs or their representatives, to submit all necessary books and records to Plaintiffs' accountant for the purpose of determining whether or not it is in compliance with its obligation to contribute to the Funds.

7. Plaintiffs are advised and believe that **July 19, 2000**, **LANAS** has failed to make some of the contributions from time to time required to be paid by it to the Funds pursuant to the terms of the Trust Agreements by which it is bound, all in violation of its contractual obligations

and its obligations under applicable state and federal statutes.

WHEREFORE, Plaintiffs pray for relief as follows:

A. **LANAS** be ordered to submit to an audit for the period **July 19, 2000 to the present**.

B. Judgment be entered on any amounts found to be due on the audit.

C. Plaintiffs be awarded their costs herein, including reasonable attorneys' fees and costs incurred in the prosecution of this action, together with liquidated damages in the amount of 20%, all as provided in the applicable agreements and ERISA Section 502(g)(2).

D. **LANAS** be enjoined from violating the terms of the collective bargaining agreements and Trust Agreements by failing to make timely payments to the Funds and be ordered to resume making those payments.

E. This Court grant Plaintiffs such other and further relief as it may deem appropriate under the circumstances.

Respectfully submitted,

**TRUSTEES OF THE CEMENT MASONS
PENSION FUND, LOCAL 502, et al.**

By: s/Donald D. Schwartz
One of their Attorneys

Donald D. Schwartz
ARNOLD AND KADJAN
19 W. Jackson Blvd.
Chicago, IL 60604
(312) 236-0415

CEMENT MASONS' UNION LOCAL NO. 502

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION
OF THE UNITED STATES AND CANADA

739 25th AVENUE - BELLWOOD, ILLINOIS 60104

TELEPHONE: 544-9100

6538

CONTRACTOR'S APPLICATION

Regarding the Employment of Members of the Cement Masons' Union Local No. 502.

Name of Business LANAS CONSTRUCTION INC. Date 7/29 2000
Name of Owner JEFF LANAS
Address 950 FAIRFAX CT GRAYSLAKE, IN 46030
Telephone (847) 548-7708 Business Residential

Experience and length of time in Cement Construction work, either as an employer or employee:

Name and address of Bank and bank references:

Social Security Number of your business:

State of Illinois Unemployment Account Number:

Copy of Workmen's Compensation Insurance Policy or a Certificate of Insurance Company certifying the existence of same must accompany this application.

Also accompanying this application shall be the following:

A bond issued by an Insurance Company, or a Certificate of Insurance certifying the existence of the same guaranteeing:

- (1.) The payment of all wages to employees.
- (2.) Payments to the Welfare Fund as required of all Contractors under the Agreement and Declaration of Trust dated August 1, 1950, entered into between this Union and various Associations named therein.
- (3.) Payments to the Pension Fund as required of all Contractors under the Agreement and Declaration of Trust dated October 1, 1955, entered into between this Union and the various Associations named therein.

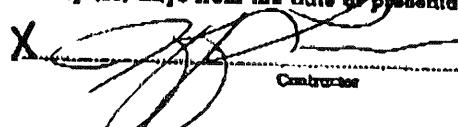
Said Bond shall be in the amount of Ten Thousand (\$10,000.00) Dollars.

In consideration of the approval of such application, the contractor or employer shall comply with all the rules, requirements, Constitution and By-laws of this Local Union.

Further, it is understood and agreed that upon approval of this application by this Local Union the undersigned Employer or Contractor shall be fully bound to all the terms and conditions of the Memorandum of Agreement printed on the reverse side hereof and expressly made a part of this Agreement.

The Executive Board will pass upon all applications within thirty (30) days from the date of presentation. The ruling of the Executive Board shall be final and binding.

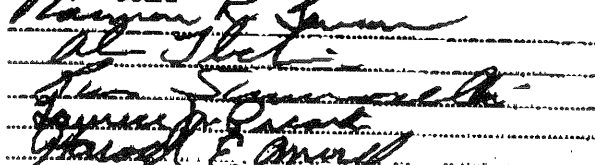
Remarks:

X 
Contractor

Approved: ☐

Disapproved: ☐

Executive Board



1. Employer, in response to the Union's claim that it represents an uncoerced majority of each Employer's employees, acknowledges and agrees that there is no good faith doubt that the Union has been authorized to and in fact does represent such majority of employees. Therefore, the Union is hereby recognized as the sole and exclusive collective bargaining representative for the employees now or hereafter employed in the bargaining unit with respect to wages, hours of work and other terms and conditions of employment.
2. The Employer affirms and adopts the Collective Bargaining Agreement between the Union and the Illinois Road Builders' Association, the Builders' Association, and the Concrete Contractors' Association of Greater Chicago which are incorporated herein with the same force and effect as if herein set forth in full with respect to wages, hours of work, and fringe benefits and all terms and conditions of employment for all cement mason employees who are or have been employed by the Employer.
3. The Employer agrees to pay the amounts which he (it) is bound to pay under the aforementioned Collective Bargaining Agreements to the CEMENT MASONS' PENSION FUND, LOCAL 502; CEMENT MASONS' INSTITUTE OF CHICAGO, ILLINOIS; CEMENT MASONS' SAVINGS FUND, LOCAL 502; and CEMENT MASONS' APPRENTICE EDUCATIONAL AND TRAINING TRUST FUND, LOCAL 502, and to become bound by and be considered a party to the Trust Agreement upon which the Funds above are based, and acknowledges and agrees to be bound by any and all separate Agreements with the Trustees of the various Funds or any Agreements with the officials of aforesaid local unions, as if he (it) has signed the original copies of the Trust instruments and any amendments thereto. The Employer ratifies and confirms the appointment of the Employer Trustees who shall, together with their Successor Trustees designated in the manner provided in said Agreements and Declarations of Trust, and jointly with an equal number of Trustees appointed by the Union, carry out the terms and conditions of the Trust Agreements.

The Employer further affirms and reestablishes that all prior contributions paid to the Welfare, Pension, Apprentice and Savings Funds were made by duly authorized agents of the Employer at the proper rate for the appropriate periods of time and that by making said prior contributions, the Employer evidenced the intent to be bound by the terms of the Trust Agreement and Collective Bargaining Agreements which were operative at the time the contributions were made, acknowledging the report form to be a sufficient instrument in writing to bind the Employer to the applicable agreements. The Employer further agrees that the Trustees may at any time have an audit made by an independent public accountant or its representatives of the payroll records of the Employer in connection with said contributions and/or reports. Where an audit discloses a difference between hours actually worked by an employee and hours reported to the Funds by the Employer and where such audit discloses any wilful violation of any of the requirements of the Trust Agreements, the officers and directors of the Employer, if a corporation, or the owner or partners of the Employer, as applicable, shall be personally liable for any underpayment or other pecuniary loss to the Fund as a result of such conduct.

4. Employees covered by this Memorandum of Agreement shall retain all the work traditionally performed by Cement Masons. The Employer agrees that he will not cause any such traditionally performed work to be done at a construction site by employees other than those covered by this Memorandum of Agreement, except with the prior written consent of the Union. Any Employer who contracts out or sublets any of the work coming within the jurisdiction of the Union shall assume the obligations of any subcontractor for prompt payment of employees' wages and other benefits, including reasonable attorneys' fees incurred in enforcing the provisions hereof. Notwithstanding any agreement to the contrary, the Employer's violation of any provision of this paragraph will give the Union the right to strike or to take any other lawful action, including all remedies at law or equity.

5. It is further agreed that the employer will pay all of its Cement Mason employees on an hourly basis only. Piece rate wages shall not under any circumstances be permitted.

6. In the event of any change in the ownership, management, or operation of the Employer's business by sale or otherwise, it is agreed that as a condition of such transfer or change, it shall be provided in the instrument effecting the change that the new owner and management shall be fully bound to the terms and conditions of this Agreement. This Agreement is applicable to all successors and transferees of the Employer, whether corporate or otherwise.

7. This Agreement shall remain in full force and effect through the 31st day of May, 1995, and shall continue thereafter unless there has been sixty (60) days written notice by registered or certified mail, by either party hereto of the desire to modify and amend this Agreement for negotiations. The employer and the Union agree to be bound by the area-wide negotiated contracts with the various Associations incorporating them into this Memorandum of Agreement and extending this Agreement for the life of the newly negotiated contract, if not notified with the specified period of time.

IN WITNESS WHEREOF, and in consideration of the mutual promises of the parties hereto, and other good and valuable consideration, this Agreement was entered into this 19th day of July, 2000.

By: [Signature]
Employer
Approved:
EXECUTIVE BOARD

By: _____
CEMENT MASONS' UNION LOCAL 502